

**REMARKS**

On entry of this Response, claims 1, 8, 14, 27 and 28 have been amended. Support for the amendment can be found, for example, at page 13, lines 16-22 of the instant application. No new matter has been introduced.

Pending in the instant application are claims 1-28, of which claims 12, 13, 19 and 21-26 were withdrawn in response to the Examiner's restriction requirement. Amongst remaining claims 1-11, 14-18, 20, 27 and 28, claims 1, 8, 14, 27 and 28 are independent. Applicants respectfully submit that the pending claims define over prior art.

**I. Claim Objection**

Claims 1-28 are objected to because of minor informalities. Applicants have changed the font of the claims to address the Examiner's concern. Therefore, Applicants respectfully request withdrawal of the objection to claims 1-28.

**II. Claim Rejection under 35 U.S.C. §102(b)**

Claims 1-3, 5, 7-11, 14-18, 20, 27 and 28 are rejected under 35 U.S.C. §102(b) as being anticipated by US 2002/0143327 (hereafter "Schluzas"). Applicants respectfully traverse the rejection in view of the amended claims.

**A. Claim 1**

Applicants respectfully submit that Schluzas fails to disclose at least the following feature of amended claim 1: "a housing component for connecting a first spinal rod and a second spinal rod, the first spinal rod supporting a first vertical region of a spine, the second spinal rod supporting a second vertical region of the spine other than the first vertical region of the spine."

Schluzas describes a transverse connector (12) connecting the spinal rods (14, 16) to each other. See Schluzas, abstract. In Schluzas, the spinal rods (14, 16) support the same vertical region of a spine. See Schluzas, Figure 1.

In comparison, claim 1 requires a housing component for connecting a first spinal rod and a second spinal rod wherein the first spinal rod supports a first vertical region of a spine and the second spinal rod supports a second vertical region of the spine other than the first vertical region of the spine. In claim 1, the first spinal rod and the second spinal rod support different vertical regions of the spine. Schluzas does not disclose a connector for connecting spinal rods that support different vertical regions of the spine.

For at least the reasons set forth above, Applicants respectfully submit that Schluzas does not disclose each and every feature of amended claim 1. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 1 under 35 U.S.C. §102(b).

**C. Claims 2, 3, 5 and 7**

Claims 2, 3, 5 and 7 depend from amended claim 1 and, as such, incorporate all of the features of amended claim 1. For at least the reasons set forth above with respect to claim 1, Applicants respectfully submit that Schluzas does not disclose each and every feature of claims 2, 3, 5 and 7. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 2, 3, 5 and 7 under 35 U.S.C. §102(b).

**D. Claim 8**

As discussed above, Schluzas fails to disclose at least the following feature of amended claim 8: “a housing component for connecting a first spinal rod and second spinal rod, the first spinal rod supporting a first vertical region of a spine, the second spinal rod supporting a second vertical region of the spine other than the first vertical region of the spine.” Therefore, Applicants respectfully submit that Schluzas does not disclose each and every feature of amended claim 8. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 8 under 35 U.S.C. §102(b).

**E. Claims 9-11**

Claims 9-11 depend from amended claim 8 and, as such, incorporate all of the features of amended claim 8. For at least the reasons set forth above with respect to claim 8, Applicants respectfully submit that Schluzas does not disclose each and every feature of claims 9-11.

Accordingly, Applicants respectfully request withdrawal of the rejection of claims 9-11 under above 35 U.S.C. §102(b).

**F. Claim 14**

Applicants respectfully submit that Schluzas fails to disclose at least the following features of amended claim 14: “the second bore hole being movable relative to the first bore hole for receiving a portion of the second rod, the second spinal rod supporting a second vertical region of the spine other than the first vertical region of the spine.”

As discussed above, Schluzas does not disclose a connector for connecting spinal rods that support different regions of the spine. Therefore, Applicants respectfully submit that Schluzas does not disclose each and every feature of amended claim 14. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 14 under 35 U.S.C. §102(b).

**G. Claims 15-18 and 20**

Claims 15-18 and 20 depend from amended claim 14 and, as such, incorporate all of the features of amended claim 14. For at least the reasons set forth above with respect to claim 14, Schluzas does not disclose each and every feature of claims 15-18 and 20. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 15-18 and 20 under 35 U.S.C. §102(b).

**H. Claim 27**

As discussed above, Schluzas fails to disclose at least the following feature of amended claim 27: “a housing component for connecting a first spinal rod and a second spinal rod, the first spinal rod supporting a first vertical region of a spine, the second spinal rod supporting a second vertical region of the spine other than the first vertical region of the spine.” Therefore, Applicants respectfully submit that Schluzas does not disclose each and every feature of amended claim 27. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 27 under 35 U.S.C. §102(b).

**I. Claim 28**

As discussed above, Schluzas fails to disclose at least the following feature of amended claim 28: “a housing component for connecting a first spinal rod and a second spinal rod, the first spinal rod supporting a first vertical region of a spine, the second spinal rod supporting a second vertical region of the spine other than the first vertical region of the spine.” Therefore, Applicants respectfully submit that Schluzas does not disclose each and every feature of amended claim 28. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 28 under 35 U.S.C. §102(b).

### **III. Claim Rejection under 35 U.S.C. §103(a)**

Claims 4 and 6 are rejected under 35 U.S.C. §103(a) as being unpatentable over Schluzas in view of US 5,053,034 to Olerud *et al.* (hereafter “Olerud”). Applicants respectfully traverse the rejection.

Claims 4 and 6 depend from amended claim 1 and, as such, incorporate all of the features of amended claim 1.

Applicants respectfully submit that Schluzas and Olerud, alone or in any combination, fail to teach or suggest “a housing component for connecting a first spinal rod and a second spinal rod, the first spinal rod supporting a first vertical region of a spine, the second spinal rod supporting a second vertical region of the spine other than the first vertical region of the spine,” as recited in claims 4 and 6.

Schluzas does not teach or suggest the above feature.

Olerud is cited to provide teachings for the teeth recited in claims 4 and 6. Olerud discusses a spinal joint for use in spinal surgery includes two blocks pivotally connected to each other. See Olerud, abstract. Olerud, however, does not teach or suggest at least “a housing component for connecting a first spinal rod and a second spinal rod, the first spinal rod supporting a first vertical region of a spine, the second spinal rod supporting a second vertical region of the spine other than the first vertical region of the spine,” as recited in claims 4 and 6. Although Olerud is combined with Schluzas, the combination does not teach or suggest the

claimed feature. Both references are silent about a connector for connecting spinal rods that support different regions of a spine.

For at least the reasons set forth above, Applicants respectfully submit that Schluzas and Olerud, alone or in any combination, fail to teach or suggest all of the features of claims 4 and 6. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 4 and 6 under 35 U.S.C. §103(a).

#### **IV. Conclusion**

In light of the above amendments and arguments, Applicants respectfully submit that all of the pending claims are in condition for allowance. Should the Examiner feel that a teleconference would expedite the prosecution of this application, the Examiner is urged to contact the Applicants' attorney at (617) 227-7400.

Please charge any shortage or credit any overpayment of fees to our Deposit Account No. 12-0080, under Order No. DUQ-002RCE2. In the event that a petition for an extension of time is required to be submitted herewith, and the requisite petition does not accompany this response, the undersigned hereby petitions under 37 C.F.R. § 1.136(a) for an extension of time for as many months as are required to render this submission timely. Any fee due is authorized to be charged to the aforementioned Deposit Account.

Dated: July 7, 2009

Respectfully submitted,

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